

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA Nos.485 & 486/PUN/2020**  
**निर्धारणवर्ष / Assessment Years : 2013-14 & 2014-15**

M/s.Chem-Tech Laboratories Pvt. Ltd., S-22, Parvati Industrial Estate, PUNE-Satara Road, Pune-411009. PAN: AA ECC 3473 E	Vs	The Deputy Commissioner of Income Tax, CPC(TDS), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri Arvind Desai- DR
Date of hearing	22/06/2022
Date of pronouncement	23/06/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

These two appeals filed by the Assessee are directed against the separate orders of Id.Commissioner of Income Tax(Appeals), Pune-10 for the A.Y.2013-14 & 2014-15 respectively, both dated 04.03.2020. Since the facts and issue involved in both the appeals are same, therefore, both the appeals are clubbed, heard and are decided together by a consolidated order. For the sake of convenience, we take the Appeal in **ITA No.485/PUN/2020 for A.Y.2013-14** as lead case.

2. The Assessee in ITA No.485/PUN/2020 for the A.Y.2013-14 has raised the following grounds of appeal:

*"The following grounds are taken without prejudice to each other  
On facts and in law:-*

“1] The learned CIT Appeal -10, Pune, has failed to Condon the delay in filing the appeal and erred in not appreciating the principals laid down by Hon’ble Apex court in the case of Collector Land Acquisition V/s. MST Katiji that substantial justice should prevail over technical considerations in condoning of the appeals.

2] The learned CIT(A) failed to appreciate the fact that delay in filling of the appeal ,was caused as appellant was informed by its consultants that the levy of late fee u/s 234E in the intimation u/s 200A was already being challenged in various forums and on this note appellant decided to wait till the outcome of the judicial proceedings.

Subsequently, outcome of Hon’ble Karnataka High Court decision in the case of Fatheraj Singhvi Vs Union were in favor , in view of this appellant informed the jurisdictional AO to stop the recovery , but Ld A.O informed the appellant to file the appeal before CIT (A).

3] The learned CIT(A) failed to appreciate that the fact that the case with arguable/ favorable points/contentions on merit should not be shut out on the presumption of limitation.

Levy of late fees u/s.234E, in the intimation u/s 200A, passed against the TDS statement filed for the period prior to 01.06.2015 was bad in law in view of the binding decisions of Hon’ble Jurisdictional ITAT Pune in the case of Gajanan Constructions &ors V/s DCIT ( 161 ITD 313) dated 23.09.2016 and Maharashtra Cricket Association v/s. DCIT (ITA No.560/PN/2016) dated 21.09.2016 and hence , the late fees u/s.234E levied in the instant case ought to have been deleted.

*4] The learned CIT(A) erred in not appreciating that the levy of late fees u/s.234E in the intimation u/s.200A, was contrary to the law laid down by jurisdiction Tribunal which was binding on the lower authority as per the decision of Hon'ble Bombay High Court in the case of bank of Baroda v/s H.C. Shrivastava (256 IT 385).*

*5] Such other grounds as may be urged at the time of hearing.”*

3. Brief facts of the case are that the assessee filed TDS statement for Quarters 2, 3 &4 of F.Y.2012-13 belatedly. Accordingly, the Assessing Officer(AO) i.e Assistant Commissioner of Income Tax (CPC) (TDS) passed an order u/s.200A of the Act, levying late fee u/s.234E of the Act.

4. Aggrieved by the order of the AO, the assessee filed appeal before the Id.Commissioner of Income Tax(Appeal). The Id.CIT(A) dismissed the appeal as according to Id.CIT(A) there was delay of 746 and 1763 days. However, the Id.CIT(A) has mentioned in the appeal order that as per Form Number 35, the date of service of the order to the assessee was 19.11.2018, but Id.CIT(A) did not accept the said date mentioned by the Assessee in Form Number 35, because, according to the Id.CIT(A) the order date is 04.10.2016 & 22.12.2013 and these orders were served on the assessee by Email. Therefore, he presumed that the orders were served on the next day

itself. Accordingly, he presumed that there was delay. The Id.CIT(A) did not condone the delay and dismissed the appeal.

5. The only issue involved is levy of late fee u/s.234E of the Act, for delay in submitting TDS statement. There is no dispute regarding delay in submitting the TDS statements. This issue is covered in favour of the assessee. The ITAT Pune in the case of Medical Superintendent Rural Hospital, vs. DCIT, CPC(TDS) [2018] 100 taxmann.com 78 (Pune Tribunal) has observed as under:

*“11. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is against levy of late filing fees under section 234E of the Act while issuing intimation under section 200A of the Act, in the first bunch of appeals. The second bunch of appeals in the case of Junagade Healthcare Pvt. Ltd. is against order of Assessing Officer passed under section 154 of the Act rejecting rectification application moved by assessee against intimation issued levying late filing fees charged under section 234E of the Act. The case of assessee before us is that the issue is squarely covered by various orders of Tribunal, wherein the issue has been decided in respect of levy of late filing fees under section 234E of the Act, in the absence of empowerment by the Act upon Assessing Officer to levy such fees while issuing intimation under section 200A of the Act. The Tribunal vide order dated 21.09.2016 with lead order in Maharashtra Cricket Association v. Dy. CIT [2016] 74 taxmann.com 6 (Pune - Trib.) relating to assessment years 2013-14 and 2014-15 for the respective quarters deliberated upon the issue and held as under: —*

"34. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements / returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law."

12. The said proposition has been applied in the next bunch of appeals with lead order in *Vidya Vardhani Education & Research Foundation v. Dy. CIT [2017] 88 taxmann.com 894 (Pune - Trib.)* and also in *Swami Vivekanand Vidyalaya (supra)* and *Medical Superintendent Rural Hospital v. ACIT [IT Appeal Nos.2072 & 2073 (PUN) of 2017, order dated 21-12-2017]*, which has been relied upon by the learned Authorized Representative for the assessee.

13. The Hon'ble High Court of Karnataka in the case of *Fatheraj Singhvi (supra)* had also laid down similar proposition that the amendment to section 200A of the Act w.e.f. 01.06.2015 has prospective effect and is not applicable for the period of respective assessment years prior to 01.06.2015. The relevant findings of the Hon'ble High Court are in paras 21 and 22, which read as under:—

"21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for

*computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1)*

*should be treated as retroactive in character and not prospective.*

*22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest."*

*14. The Hon'ble High Court thus held that where the impugned notices given by Revenue Department under section 200A of the Act were for the period prior to 01.06.2015, then same were illegal and invalid. Vide para 27, it was further held that the impugned notices under section 200A of the Act were for computation and intimation for payment of fees under section 234E of the Act as they relate for the period of tax deducted at source prior to 01.06.2015 were being set aside.*

6. Respectfully following the above decision of ITAT Pune Bench, we hold that the levy of late fee under section 234E of the Act for the Financial Year 2012-13 is bad in law. Therefore, the Assessing Officer is

directed to delete the said late fee. Accordingly, the appeal of the assessee is allowed.

**ITA No.486/PUN/2020 for A.Y.2014-2015:**

7. Identical issue is involved in the ITA No.486/PUN/2020 for A.Y.2014-15. There was delay in filling TDS statements for F.Y.2013-14. The Assessing Officer passed orders u/s.200A of the Act, levying late fee u/s 234E of the Act. Since the facts and issue involved is identical; our decision in ITA No.485/PUN/2020 shall also apply *mutatis-mutandis* to this appeal in ITA No.486/PUN/2020 for the A.Y.2014-15. Accordingly, appeal of the assessee is allowed.

8. In the result, both appeals of the assessee i.e. ITA No.485/PUN/2020 and ITA No.486/PUN/2020 are allowed.

Order pronounced in the open Court on 23<sup>rd</sup> June, 2022.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 23<sup>rd</sup> June, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि,आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.